

Central Intelligence Agency



Washington, D.C. 20505

OLL #85-0227

30 JAN 1985

**The Honorable Jack Brooks
Chairman
Committee on Government Operations
House of Representatives
Washington, D.C. 20515**

Dear Mr. Chairman:

This is in response to your request for the views of the Central Intelligence Agency concerning H.R. 502, a bill to amend the Federal Property and Administration Services Act of 1949 to prohibit federal officials from monitoring or recording telephone conversations without the consent of all parties. Mr. Casey has asked me to respond on his behalf.

As you may be aware, the CIA provided to you in a letter its views on a bill identical to H.R. 502, which was introduced in the last Congress (H.R. 4620). I have reviewed this letter, which I have enclosed, and determined that our views have not changed.

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If we can be of further assistance, please contact me or [redacted] of my Office at [redacted]

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Sincerely,

/s/Charles A. Briggs

**Charles A. Briggs
Director, Office of Legislative Liaison**

Enclosure

Distribution:

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OLL:LEG:DMP:dpt (24 Jan 85)

99TH CONGRESS
1ST SESSION

H. R. 502

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1985

Mr. BROOKS introduced the following bill; which was referred jointly to the Committees on Government Operations and Post Office and Civil Service

A BILL

To prohibit the recording of conversation made on the Federal telecommunications system, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the “Federal Telecommunica-
4 tions Privacy Act of 1985”.

5 SEC. 2. Title I of the Federal Property and Administra-
6 tive Services Act of 1949 is amended by adding at the end
7 thereof the following new section:

8 “RECORDING OF CONVERSATIONS ON FEDERAL
9 TELECOMMUNICATIONS SYSTEM

10 “SEC. 113. (a)(1) Except as provided in subsections (b),
11 (c), and (d), no Federal officer or employee shall cause or

1 permit the recording of, or listening-in upon, any conversa-
2 tion conducted on the Federal telecommunications system es-
3 tablished under section 7 of the Act of June 14, 1946 (40
4 U.S.C. 295), or made available under section 110 of this Act.

5 “(2) Except as provided in subsections (b), (c), and (d),
6 no Federal officer or employee shall cause or permit the re-
7 cording of, or listening-in upon, any conversation conducted
8 on any other telecommunications system if the conversation
9 (A) is between a Federal officer or employee and any other
10 person and (B) involves the conduct of Government business.

11 “(b) Without the consent of any party to a conversation,
12 the recording of, or listening-in upon, such conversation may
13 be conducted notwithstanding subsection (a) if such recording
14 or listening-in is authorized under, and conducted in accord-
15 ance with the requirements of, the Omnibus Crime Control
16 and Safe Streets Act of 1968 (18 U.S.C. 2510 et seq.) or the
17 Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
18 1801 et seq.).

19 “(c) With the consent of one party to a conversation, the
20 recording of, or listening-in upon, such conversation may be
21 conducted notwithstanding subsection (a) if the recording or
22 listening-in is performed in accordance with the following
23 conditions:

24 “(1) The recording or listening-in is performed for
25 law enforcement purposes in accordance with proce-

1 dures established by the agency head, as required by
2 the Attorney General's guidelines for the administra-
3 tion of the Omnibus Crime Control and Safe Streets
4 Act of 1968, and in accordance with procedures estab-
5 lished by the Attorney General.

6 “(2) The recording or listening-in is performed for
7 counterintelligence purposes and approved by the At-
8 torney General or the Attorney General's designee.

9 “(3) The recording or listening-in is performed by
10 any Federal employee for public safety purposes and
11 documented by a written determination of the agency
12 head or the designee that cites the public safety needs
13 and identifies the segment of the public needing protec-
14 tion and cites examples of the hurt, injury, danger, or
15 risks from which the public is to be protected.

16 “(4) The recording or listening-in is performed by
17 a handicapped employee, provided a physician has cer-
18 tified (and the head of the agency or designee concurs)
19 that the employee is physically handicapped and the
20 head of the agency or designee determines that the use
21 of a listening-in or recording device is required to fully
22 perform the duties of the official position description.
23 Equipment shall be for the exclusive use of the handi-
24 capped employee. The records of any interceptions by
25 handicapped employees shall be used, safeguarded, and

1 destroyed (notwithstanding subsection (h) of this sec-
2 tion) in accordance with appropriate agency records
3 management and disposition systems.

4 “(5) The recording or listening-in is performed by
5 any Federal agency for service monitoring but only
6 after analysis of alternatives and a determination by
7 the agency head or the agency head’s designee that
8 monitoring is required to effectively perform the agency
9 mission. Strict controls shall be established and ad-
10 hered to for this type of monitoring.

11 “(d) With the consent of all the parties to a conversa-
12 tion, the recording of, or listening-in upon, such conversation
13 may be conducted notwithstanding subsection (a). This in-
14 cludes telephone conferences, secretarial recording, and other
15 acceptable administrative practices. Strict supervisory con-
16 trols shall be maintained to eliminate any possible abuse of
17 this privilege. The agency head or the agency head’s desig-
18 nee shall be informed of this capability for listening-in or re-
19 cording telephone conversations.

20 “(e)(1) Each agency shall ensure that—

21 “(A) all listening-in or recording of telephone con-
22 versations pursuant to paragraph (3), (4), or (5) of sub-
23 section (c) shall have a written determination approved
24 by the agency head or the agency head’s designee
25 before operations; and

1 “(B) service personnel who monitor listening-in or
2 recording devices shall be designated in writing pursu-
3 ant to paragraph (5) of subsection (c) and shall be pro-
4 vided with written policies covering telephone conver-
5 sation monitoring which shall contain at a minimum
6 the following instructions:

7 “(i) no telephone call shall be monitored
8 unless the Federal agency has taken continuous
9 positive action to inform the callers of the moni-
10 toring;

11 “(ii) no data identifying the caller shall be re-
12 corded by the monitoring party;

13 “(iii) the number of calls to be monitored
14 shall be kept to the minimum necessary to com-
15 pose a statistically valid sample;

16 “(iv) agencies using telephone instruments
17 that are subject to being monitored shall conspicu-
18 ously label them with a statement to that effect;
19 and

20 “(v) since no identifying data of the calling
21 party will be recorded, information obtained by
22 the monitoring shall not be used against the call-
23 ing party.

24 “(2) Current copies and subsequent changes of agency
25 documentation, determinations, policies, and procedures sup-

1 porting operations pursuant to paragraph (3), (4), or (5) of
2 subsection (c) shall be forwarded before the operational date
3 to the General Services Administration. Specific telephones
4 shall be identified in the documentation or determination to
5 prevent any possible abuse of the authority.

6 “(3) Procedures for monitoring performed under para-
7 graph (1) of subsection (c) shall contain at a minimum—

8 “(A) the identity of an agency official who is au-
9 thorized to approve the actions in advance;

10 “(B) an emergency procedure for use when ad-
11 vance approval is not possible;

12 “(C) adequate documentation on all actions taken;

13 “(D) records administration and dissemination pro-
14 cedures; and

15 “(E) reporting requirements.

16 “(4) Requests to the General Services Administration
17 for acquisition approval or installation of telephone listening-
18 in or recording devices shall be accompanied by a determina-
19 tion as defined in subsection (j)(2).

20 “(5) Each agency shall ensure that a program is estab-
21 lished to reevaluate at least every two years the need for
22 each determination authorizing listening-in or recording of
23 telephone conversations under this section.

24 “(f)(1) The General Services Administration shall be ac-
25 countable for information concerning the use of listening-in or

1 recording of telephone conversations in the Federal Govern-
2 ment as requested under paragraphs (3), (4), and (5) of sub-
3 section (c).

4 “(2) The General Services Administration shall periodi-
5 cally review the listening-in programs within the agencies to
6 ensure that agencies are complying with Federal property
7 management regulations.

8 “(3) The General Services Administration shall provide
9 assistance to agencies in determining what communications
10 devices and practices fall within the listening-in or recording
11 category. The General Services Administration shall also
12 provide guidance and assistance in the development of admin-
13 istrative alternatives to the listening-in or recording of tele-
14 phone conversations.

15 “(4) The General Services Administration shall take ap-
16 propriate steps to obtain compliance with this Act if an
17 agency has not documented its devices in accordance with
18 this section.

19 “(g) For purposes of section 552a of title 5, United
20 States Code, any recording or transcription of a conversation
21 made under (or in violation of) this Act shall be deemed to be
22 a record in a system of records (as such terms are defined in
23 subsection (a) (4) and (5) of such section) which pertains to
24 each party to such conversation, and each such party shall

1 have all the rights and remedies afforded to an individual
2 under such section.

3 “(h) Any recording or transcript of a conversation made
4 under (or in violation of) this Act shall constitute a record
5 deposited in a public office for purposes of section 2071 of
6 title 18, United States Code.

7 “(i) The functions and responsibilities of the General
8 Services Administration and of agency heads and agency
9 heads’ designees under this section shall not be delegated or
10 assigned.

11 “(j) For purposes of this section—

12 “(1) the term ‘Federal officer or employee’ in-
13 cludes any officer or employee of any contractor, advi-
14 sory committee, or consultant of an agency;

15 “(2) the term ‘determination’ means a written
16 document (usually a letter) that specifies the operation-
17 al need for listening-in or recording of telephone con-
18 versations, indicates the specific system and location
19 where it is to be performed, lists the number of tele-
20 phones and recorders involved, establishes operating
21 times and a specific expiration date, and justifies the
22 use, and is signed by the agency head or the agency
23 head’s designee;

9

1 “(3) the term ‘agency head’s designee’ means only
2 the individual designated pursuant to section 3506(b) of
3 title 44, United States Code.”.

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